

1 BEFORE THE
2 ILLINOIS COMMERCE COMMISSION
3 PREBENCH SESSION

4 IN THE MATTER OF:)

5 CENTRAL ILLINOIS LIGHT COMPANY,)
6 d/b/a AMERENCILCO, CENTRAL)
7 ILLINOIS PUBLIC SERVICE COMPANY,)
8 d/b/a AMERENCIPS and ILLINOIS)
9 POWER COMPANY, d/b/a AMERENIP,)

) No. 07-0539

10 Approval of Energy Efficiency and Demand Response Plan.)
11)

12 COMMONWEALTH EDISON COMPANY)
13)

) No. 07-0540

14 petition for approval of the)
15 Energy Efficiency and)
16 Demand-Response Plan pursuant to)
17 Section 12-103(f) of the Public)
18 Utilities Act.)

19 NORTH SHORE GAS COMPANY)
20 THE PEOPLES GAS LIGHT AND COKE)
21 COMPANY)

) Nos. 07-0241

22 Proposed general increase in) 07-0242
 natural gas rates.)

)
23 Chicago, Illinois
24 February 5, 2008

25 Met pursuant to notice at 1:30 p.m.

26 BEFORE:

27 THE COMMISSION, EN BANC

28 SULLIVAN REPORTING COMPANY, by
29 Tracy L. Overocker, CSR

1 CHAIRMAN BOX: Pursuant to the provisions of
2 the Illinois Open Meetings Act, I now convene a
3 regularly scheduled prebench session of the Illinois
4 Commerce Commission. In Chicago are Commissioners
5 Ford, O'Connell-Diaz, Lieberman, Elliott and myself,
6 Chairman Box. We have a quorum. We will now
7 proceed.

8 Before moving in furtherance of the
9 agenda, this is the time where we allow the members
10 of the public to address the Commission pursuant to
11 Title 2 of the Illinois Administrative Code Part
12 1700.10, implementing Public Act 95-127.

13 Members of the public wishing to
14 address the Commission must notify the Chief Clerk's
15 Office at least 24 hours prior to the bench or
16 prebench session. According to the Chief Clerk's
17 Office, we have received no requests at this time.

18 A few items on --

19 MR. WALLACE: Mr. Chairman?

20 CHAIRMAN BOX: Yes.

21 MR. WALLACE: If I could just interject here,
22 I'd like to inform the Commission that four public

1 comments were received in the Peoples Gas rate case
2 on our e-Docket earlier or late this morning. So
3 pursuant to the -- Section 2-107 notice -- you know,
4 I'm just alerting you to this. Unfortunately, these
5 comments have come in so late that there is no real
6 way to deal with the substance of the comments. They
7 do appear on the Commission's Web site.

8 CHAIRMAN BOX: Will we respond and put a
9 response on the Web site as the new rules call for or
10 are you saying it's too late for that, also?

11 MR. WALLACE: It's really too late. They came
12 in about 11:00, 11:30, so it's --

13 CHAIRMAN BOX: I would think even though they
14 came in --

15 MR. WALLACE: We will forward them to --

16 CHAIRMAN BOX: -- you should prepare as a
17 response as the rules call for because I'm quite sure
18 that this will not be the end of this particular case
19 today and, so, I think we have to respond to
20 everything that's submitted I think, don't we?

21 MR. WALLACE: Yes.

22 CHAIRMAN BOX: So, I think in due time, we

1 should prepare a response, even though they came in
2 today.

3 MR. WALLACE: Okay.

4 CHAIRMAN BOX: Thank you.

5 We have three items on today's
6 prebench agenda. The first and second items concern
7 the energy efficiency and demand response plans of
8 AmerenCILCO, AmerenCIPS and AmerenIP and Commonwealth
9 Edison. These plans were submitted pursuant to the
10 new Open Act 95-048 which created Section 12-103,
11 which requires Illinois utilities to implement energy
12 efficiency and demand response plans to meet
13 aggressive energy reduction goals. I think the plans
14 were filed on November 15th and I think the deadline
15 is 30 days after that, which is February 15th. So we
16 will have discussions today, questions, if any, from
17 the judges and the final vote tomorrow, since this is
18 the last meeting before February 15th.

19 Judges Sainsot and Kimbrel, would you
20 please summarize the Ameren, Commonwealth Energy's
21 efficiency and demand response proposals for us?

22 JUDGE SAINOT: Just very briefly before I

1 start, I just wanted to point out that there are two
2 date errors that we made on the ComEd order. On
3 Pages 25 and 27 they both have 2107 and they both
4 refer to years 21, I just wanted to alert you to
5 that. We can fix them if you so desire. Just let us
6 know.

7 Very briefly, Section 12-103 of the
8 Public Utilities Act is a brand-new statute. It
9 requires both ComEd and Ameren to pass on a slight
10 surcharge to all of their customers and also to use
11 the funds collected to create energy efficiency and
12 demand response programs that reduce energy
13 consumption. The statute has energy efficiency and
14 demand response goals that the two utilities must
15 meet and penalties for failure to meet those goals.

16 The reasons for imposing this
17 surcharge are that energy efficiency and demand
18 response lessen the need for expensive peak
19 electricity, lessen the need for new generation of
20 electricity, and they lessen pollution, thereby,
21 reducing the cost of electricity and pollution
22 cleanup for everybody.

1 To that end, Ameren and ComEd
2 submitted energy efficiency and demand response plans
3 to this Commission for its approval and the surcharge
4 will be imposed through a rider. These two plans
5 were designed by the same organization, ICF
6 International, and they have various programs such as
7 those to offer discounts on energy efficient light
8 bulbs, incentives to purchase energy efficient
9 appliances, programs to recycle inefficient
10 refrigerators and many other programs.

11 Energy reduction, as a result of these
12 programs is annualized, meaning, that no matter when
13 in the year a particular measure is installed or
14 purchased, the utility gets credit for the whole
15 year.

16 The Illinois Department of Commerce
17 and Economic Opportunity is statutorily required to
18 administer 25 percent of these programs. It has
19 agreed to provide the statutorily required low income
20 and local government programs pursuant to the plans.

21 And I'd just like to point out that
22 the major difference between the two utilities plans

1 is that ComEd already had many demand response
2 programs whereas Ameren didn't, thereby -- therefore,
3 ComEd only had to expand one of its existing programs
4 to meet the demand response goals. The main issues
5 in this docket -- and before I get into that, I
6 should point out that no party argued that these
7 plans should be rejected, they just had issues with
8 certain parts of how the plans were implemented.

9 Having said that, the major issues
10 were how much power the advisory committees to these
11 two utilities should have over the utilities and how
12 those committees should function. Deeming values,
13 meaning that the Commission accepts certain values as
14 correct until they're found to be incorrect, and then
15 the new value is imposed prospectively. Single
16 charge cost recovery, as opposed to spreading the
17 cost recovery out in accordance to usage of the
18 programs; banking energy savings, meaning, that if a
19 utility exceeds an energy efficiency goal for any one
20 year, it can apply that toward the next year's energy
21 efficiency goals. What entity the utility or the
22 advisory committee or this Commission hires and fires

1 the independent evaluator, that's required by the
2 statute; and ComEd's use of funds to advertise its
3 demand response program in Nature First.

4 That's a brief overview and we're open
5 for questions.

6 CHAIRMAN BOX: Questions from Commissioners?

7 Commissioner Elliott.

8 COMMISSIONER ELLIOTT: Judge Sainsot, I have a
9 question and what I have is the Ameren order in front
10 of me, but I think it's -- the same issue in both
11 cases, so I'll just refer to the Ameren order. On
12 Page 17, in the third paragraph under Recovery of
13 Incremental Costs, Item J, there's a note that --
14 measures implemented for energy efficiency Kwh
15 reductions are applicable to all delivered energy,
16 regardless of the customer's choice of supplier for
17 energy. The second sentence says, However, demand
18 response measures are applicable only to the load of
19 the customers served through fixed price virtual
20 bundled service tariffs. Do you see that paragraph?

21 JUDGE SAINOT: Right.

22 COMMISSIONER ELLIOTT: And I think on Page 27

1 there was a discussion of Constellation's issue with
2 this that it appears that if demand response costs
3 are allocated to all customers through the charge,
4 that there could be some double payment here. Is the
5 charge that's being applied, taking demand response
6 costs only to those customers that are noted in
7 Page 17 or is it applicable to all customers?

8 JUDGE SAINSOT: The charge gets applied to all
9 customers whether they're an ARES customer or an
10 Ameren or ComEd customer.

11 COMMISSIONER ELLIOTT: Does it appear to be a
12 conflict there when the statement is this: Should
13 only be applicable to the loaded customers that are
14 bundled service with demands under 400 Kw?

15 JUDGE SAINSOT: I think what that's referring
16 to there is just -- let me just read that really
17 quickly.

18 COMMISSIONER ELLIOTT: I read this as saying
19 that energy efficiency applies to all customers where
20 DR applies the costs, apply only to the bundled
21 customers that are noncompetitive and served by the
22 utility.

1 JUDGE SAINSOT: No. No. No. That's not true.
2 I think what this sentence is referring to is
3 something completely different, although it's not
4 completely clear. I think, really -- don't forget
5 this is taken from the testimony. What it's
6 referring to is just really -- just differentiating
7 demand response from energy efficiency, who takes
8 from demand response, that's what I took it to mean;
9 but, certainly, if it's causing confusion we can --

10 COMMISSIONER ELLIOTT: Well, I think -- yeah,
11 it is causing some confusion to me. It appears that
12 since this is the company's testimony, that they're
13 only going to provide demand response services to
14 this subgroup of all customers. It appears that
15 they're saying it's only applicable to this group --

16 JUDGE SAINSOT: Right. I think that's --

17 COMMISSIONER ELLIOTT: -- we're charging all
18 customers for the DR programs.

19 JUDGE SAINSOT: Right, I think that's correct.
20 They are only providing demand response to their
21 customers, but the charge gets imposed on all
22 customers, whether they are ARES customers or ComEd

1 or Ameren customers.

2 COMMISSIONER ELLIOTT: You don't see that as
3 being inequitable, which is what I believe
4 Constellation is arguing?

5 JUDGE SAINSOT: I do see it as being
6 inequitable. I just don't know --

7 COMMISSIONER ELLIOTT: Was there administrative
8 issue with -- what was the company's response?

9 JUDGE SAINSOT: There was just no evidence
10 presented as to what we could do to fix it and that
11 was my problem with Constellation's argument. It
12 wasn't that I didn't take it seriously. It's just
13 that that would require information from the ARES to
14 pass from the ARES to ComEd and Ameren about their
15 customers and about who's -- who's taking demand
16 response from them, so it could happen. It just
17 can't happen in 90 days.

18 COMMISSIONER LIEBERMAN: Can I just ask one
19 question?

20 COMMISSIONER ELLIOTT: Sure.

21 COMMISSIONER LIEBERMAN: Is the differential in
22 the fact that the energy efficiency is related to

1 everybody? I mean, clearly, delivery to customers so
2 everybody pays and everybody gets to participate?

3 JUDGE SAINOT: Sure.

4 COMMISSIONER LIEBERMAN: Is it in the statute
5 that the DR is just a bundled customer or is that --

6 JUDGE SAINOT: No, I don't think that's true.
7 I don't recall it being --

8 COMMISSIONER LIEBERMAN: I'm asking.

9 JUDGE SAINOT: I don't recall it being in the
10 statue.

11 COMMISSIONER ELLIOTT: Well, it appears that
12 the company is proposing that; it's only applicable
13 to that subgroup. So it seems to me that it's --
14 it's the company's -- if that's their demarcation,
15 then it should be their allocation of costs only to
16 that group of -- it doesn't have anything to do with
17 anyone else or the ARES, it's -- if you know what
18 customers you're serving that are under 400 Kw
19 noncompetitive, then the costs should be allocated
20 only to that subgroup.

21 JUDGE SAINOT: So, are you --

22 COMMISSIONER ELLIOTT: I mean, there's one way

1 you can do it. You could have two charge -- you
2 could have an EE charge that's applicable to
3 everybody and a DR charge that's applicable only to
4 that subgroup, that's one way to treat it, but there
5 was no testimony to that effect, apparently.

6 JUDGE SAINSOT: No. No. And I took
7 Constellation's argument to mean that only its
8 customers that are -- only the customers of ARES that
9 are taking demand response should receive -- from
10 ARES -- should receive credit for that and there's
11 just no way that a utility could -- that ComEd and
12 Ameren would have that information unless the ARES is
13 provided it.

14 COMMISSIONER ELLIOTT: You know, I looked at it
15 as if they're being charged costs that they're not
16 being provided a service for, which is, I thought,
17 what their argument was.

18 JUDGE SAINSOT: Right. And it was a very vague
19 statement. You could -- I think you could -- there
20 may be even more meanings out there than just our
21 two.

22 COMMISSIONER ELLIOTT: Is there a way to treat

1 it, it just wasn't brought forth in the testimony?

2 JUDGE SAINSOT: Right.

3 COMMISSIONER FORD: And I certainly took it to
4 mean that if they were to change -- if they went out
5 and got some alternative services on their own from
6 another provider, that is how they would end up
7 paying for it twice. I guess that was my
8 interpretation and I'm just looking on Page 28.

9 COMMISSIONER ELLIOTT: I did have one other
10 issue that's unrelated. Going to the ComEd order,
11 that's on my Page 25. It's related to the Nature
12 First Program Reimbursement or recovery of
13 incremental costs. The section reads that the only
14 revenues ComEd currently expects to reflect are those
15 derived from PJM are for the incremental expansion of
16 demand response capabilities under Rider AC-7; and in
17 the future, the EEDR revenues that ComEd obtains from
18 any sources, other than the EEDR charge itself,
19 they're directly related to the approved programs.
20 Now, I read this as acknowledging that if ComEd
21 expands the Nature First and has greater capability
22 of demand response, that they could submit that to

1 PJM as a callable demand response and be compensated
2 for that and that that compensation would flow back
3 through the EEDR; is that correct?

4 JUDGE SAINSOT: That is correct.

5 COMMISSIONER ELLIOTT: Was this -- was
6 testimony of this nature put forth in the Ameren case
7 with regard to MISO? I didn't see anything in the
8 order.

9 JUDGE SAINSOT: I don't recall where -- I don't
10 recall if it was testimony or in a post-trial brief;
11 but Ameren agreed to -- and it seems to me that
12 Ameren agreed earlier on than ComEd did to this, so
13 that may be --

14 COMMISSIONER ELLIOTT: Similar treatment is
15 going to occur in the Ameren case, that any revenues
16 associated with MISO demand response payments would
17 flow back through as an offset to the charge?

18 JUDGE SAINSOT: Yes. Absolutely.

19 COMMISSIONER ELLIOTT: Great. That's all I
20 have.

21 CHAIRMAN BOX: Commissioner Ford?

22 You have very complicated questions.

1 COMMISSIONER LIEBERMAN: I'm going to ask a
2 simple-minded question.

3 CHAIRMAN BOX: The TRC tests that you have --

4 JUDGE SAINSOT: Right.

5 CHAIRMAN BOX: -- portfolio as a whole rather
6 than individual programs --

7 JUDGE SAINSOT: Right.

8 CHAIRMAN BOX: -- what is the rationale for
9 that?

10 JUDGE SAINSOT: Pardon me?

11 CHAIRMAN BOX: What is the rationale for that
12 recommendation?

13 JUDGE SAINSOT: Well, there are a couple of
14 rationales. By applying it to the whole program, the
15 utilities and DCO have greater flexibility. They
16 have less to worry about in terms of being close to
17 the edge with the TRC test. And, also, that
18 flexibility allows the utilities to include measures
19 that are not initially very energy efficient but have
20 more long-term efficiency. And I would also point
21 out that the Illinois TRC test is tough. TRC tests
22 in a lot of other states allow energy efficiency

1 savings when those measures save gas as well. There
2 are certain -- there are a lot of energy efficiency
3 measures that reduce gas consumption and electricity
4 consumption; but our test doesn't allow the utility
5 to include natural gas reduction efficiency, so
6 that's the rationale behind that at the portfolio
7 level.

8 CHAIRMAN BOX: Commissioner Lieberman?

9 COMMISSIONER LIEBERMAN: Just really
10 informational. From reading the statute and sort of
11 listening to the debate, I understand that the
12 targets were .2, .4, and .6 and yet -- what I haven't
13 quite figured out is how to interpret that. Did --
14 did the -- was there testimony to the extent that it
15 said it's -- the first year is .2, the second year --
16 is it .2 plus another .2 or is it .2 plus .4? In
17 other words, are the targets kind of incremental or
18 are they --

19 JUDGE SAINOT: They are. But they increase
20 every year, but they increase --

21 COMMISSIONER LIEBERMAN: Are they additive?

22 JUDGE SAINOT: -- I don't have the statute in

1 front of me, but they don't increase -- each
2 subsection increases it more.

3 COMMISSIONER LIEBERMAN: So the first year it's
4 .2.

5 JUDGE SAINSOT: Mm-hmm.

6 COMMISSIONER LIEBERMAN: And the second year,
7 the way it was interpreted, is it .4 or is it .6? In
8 other words, do you add them together or do you take
9 the increment? They have to meet the target in the
10 second year, do they have to meet .6 percent of
11 kilowatt hours or .4 percent of kilowatt hours?

12 COMMISSIONER ELLIOTT: From the base year?

13 COMMISSIONER LIEBERMAN: From the base year,
14 yeah.

15 JUDGE SAINSOT: Well, I think what you're
16 saying is do they piggyback on each other or --

17 COMMISSIONER LIEBERMAN: Yeah, exactly.

18 JUDGE SAINSOT: They do. Right.

19 COMMISSIONER LIEBERMAN: So that by the third
20 year, it's .6 plus .4, so it's 1 percent by the third
21 year?

22 JUDGE SAINSOT: Right. Right.

1 COMMISSIONER LIEBERMAN: So this gets really
2 big from the base?

3 JUDGE SAINSOT: Right. It starts off small.

4 CHAIRMAN BOX: I thought .2, the next year .4,
5 .6, .8.

6 COMMISSIONER LIEBERMAN: That's what I thought,
7 but I heard rumor back when they were debating the
8 statute that this was unclear.

9 JUDGE SAINSOT: I think it piggybacks if you
10 look at the statute. I will go and have a look at it
11 again, but I think it does add on each year.

12 COMMISSIONER LIEBERMAN: So by the fourth year,
13 it will be .8, so it's kind of cumulative, I guess.

14 CHAIRMAN BOX: Piggyback to me means .2, .4,
15 .6, growing exponentially; right?

16 COMMISSIONER LIEBERMAN: That's what I was
17 trying to understand.

18 JUDGE SAINSOT: Right. I can have a look of it
19 again. I've been looking at other portions of the
20 statute a lot, lately, not that particular one.

21 COMMISSIONER LIEBERMAN: So your census was
22 there -- you're census is that it grows

1 exponentially --

2 JUDGE SAINSOT: Well, it would grow anyway
3 because you'd have further reductions.

4 COMMISSIONER LIEBERMAN: -- .2, .4, .6 in the
5 one case and in this case, .2, .6, .8.

6 CHAIRMAN BOX: How do you go from .2 --

7 COMMISSIONER LIEBERMAN: Because you are
8 adding --

9 CHAIRMAN BOX: -- to .6?

10 COMMISSIONER ELLIOTT: If you set 2007 as the
11 base year and you have to reduce by 2 percent in
12 2008, in 2009 if you continued with 2007 as the base
13 year, it would be .6. If you move the base year to
14 2008, it will be .4. So if you hold the base year
15 constantly -- I think that's what Commissioner
16 Lieberman is talking about --

17 COMMISSIONER LIEBERMAN: Yeah. I'm just trying
18 to understand that they have to --

19 COMMISSIONER ELLIOTT: -- is that correct?

20 CHAIRMAN BOX: I think we needed clarification.

21 COMMISSIONER LIEBERMAN: My second question
22 sort of follows along that line. I understand the

1 way the statute is drafted there is a price cap, a
2 rate impact cap --

3 JUDGE SAINOT: Right.

4 COMMISSIONER LIEBERMAN: -- of half a percent
5 the first year, 1 percent -- so it's half a percent,
6 plus half a percent in the second year?

7 JUDGE SAINOT: You are talking about how they
8 compute how much money they are going to spend on
9 this?

10 COMMISSIONER LIEBERMAN: To meet the statutory
11 rate cap, rate impact, whatever they call it, right,
12 wasn't there like --

13 JUDGE SAINOT: The spending screen I think is
14 what they like to call it, yeah.

15 CHAIRMAN BOX: There's a maximum they don't
16 have to -- can exceed.

17 JUDGE SAINOT: I think they can exceed it.

18 COMMISSIONER LIEBERMAN: I thought it was a
19 hard cap in the statute --

20 JUDGE SAINOT: The expenditure?

21 COMMISSIONER LIEBERMAN: That they can't --
22 that they can --

1 JUDGE SAINSOT: Well, here's why I don't think
2 it's a hard-and-fast cap because they have to -- the
3 statute requires them each year to figure -- to
4 estimate based on last year's figure and based on how
5 much money they are going to have going forward,
6 period. So the statute forces them to budget for
7 that year. I don't think there is language in there
8 that says you can't go beyond this and that's --

9 COMMISSIONER LIEBERMAN: Could you check on
10 that because I've read that statute and it strikes me
11 that the rate cap and the budget are --

12 JUDGE SAINSOT: Well, you are talking about the
13 spending screens now?

14 COMMISSIONER ELLIOTT: You know, I think we're
15 talking about -- and I'm looking at the analysis and
16 conclusion under single cost charge recovery in the
17 ComEd case, Section 9, my Page 38, where you indicate
18 BOMA's construction of Section 12-103 of the Act is
19 erroneous, it does limit the energy efficiency demand
20 response measure. BOMA contends but it does so in a
21 uniformed manner to all, it is a cap. And then it
22 goes on to discuss the particular section where --

1 notwithstanding the requirements --

2 JUDGE SAINSOT: That needs to go.

3 COMMISSIONER ELLIOTT: -- no more than
4 5 percent of the amount paid per kilowatt hour --

5 COMMISSIONER LIEBERMAN: .5.

6 COMMISSIONER ELLIOTT: Is that what you're
7 talking about?

8 COMMISSIONER LIEBERMAN: That's exactly what
9 I'm talking about.

10 JUDGE SAINSOT: Let me just see.

11 Yeah, I used that language and that's
12 not the greatest language in the world. That was --
13 that was in the PEPO and both ComEd and Staff put in
14 arguments construing these statutes with regards --
15 this portion of the statute with regard to banking
16 excess costs and -- because if you recall, the HEPO
17 originally said you can only bank de minimis and you
18 can only bank under certain conditions. ComEd said,
19 No, this is not a hard-and-fast situation, and Staff
20 agreed, and I took a look at the statute at that
21 point and said, ComEd and Staff are correct, it's not
22 a hard-and-fast --

1 COMMISSIONER LIEBERMAN: Cap?

2 JUDGE SAINSOT: -- cap.

3 COMMISSIONER LIEBERMAN: So is it your sense,
4 then, that if they wanted to propose programs that
5 would generate more than the .2, it would be legally
6 okay? I mean, if they went over the .5 rate cap --

7 JUDGE SAINSOT: Right.

8 COMMISSIONER LIEBERMAN: -- but they still
9 recover for it, they can bank it?

10 JUDGE SAINSOT: Right. They could -- these
11 orders allow them to use those expenditures.

12 CHAIRMAN BOX: Later?

13 JUDGE SAINSOT: -- in the following year.

14 CHAIRMAN BOX: So there is a cap?

15 COMMISSIONER LIEBERMAN: But, I mean, over the
16 first four years, as I read the statute, the rate
17 impact is 2 percent --

18 JUDGE SAINSOT: Right.

19 COMMISSIONER LIEBERMAN: -- in total, for the
20 four years?

21 JUDGE SAINSOT: Right.

22 COMMISSIONER LIEBERMAN: So your -- I mean,

1 they could propose and recover.

2 JUDGE SAINSOT: So, I mean, I guess I'm saying
3 this is a cap, but it's not something that -- because
4 it's -- they have to project a budget ahead of time,
5 it's -- it's a ceiling, it's not a hard-and-fast
6 thing that they should just not recover from. It's a
7 mechanism to allow them to figure out how much money
8 they have at the beginning of the year as opposed to
9 something that --

10 COMMISSIONER LIEBERMAN: To meet the target?

11 JUDGE SAINSOT: Right.

12 COMMISSIONER LIEBERMAN: I mean, if it's linked
13 to the target?

14 JUDGE SAINSOT: Right. So I'm not sure that
15 the use of the word "cap" here is the greatest, but I
16 don't think it's totally inaccurate either.

17 COMMISSIONER FORD: But also on Page 41 you
18 said if you bank it, it does not allow a utility to
19 recover costs that are in excess of the statute.

20 COMMISSIONER LIEBERMAN: That's what I'm
21 struggling with because I'm trying to understand. I
22 mean, if they --

1 COMMISSIONER O'CONNELL-DIAZ: So is it that
2 there is elasticity but there is a limit? Is that
3 what you're --

4 JUDGE SAINOT: Yeah. I don't think this is a
5 hard-and-fast -- you reach this certain thing and
6 you're -- you're out of the water. I think it's more
7 of a situation where -- it's a planning situation,
8 it's more of a situation where they have to make a
9 determination, but they have to make it early on in
10 order to figure out what they're going to do the next
11 year.

12 COMMISSIONER LIEBERMAN: I apologize because
13 I'm confused. So let me --

14 COMMISSIONER FORD: Right on.

15 COMMISSIONER LIEBERMAN: -- so let's say in the
16 first year they spent -- I mean, they got extra
17 energy savings and they spent a little more -- I
18 mean, so the rate impact is higher than .5, what
19 you're saying in the second year, they could get a
20 smaller level of energy savings, this is the banking,
21 they can meet the target with savings they caused in
22 the first year; but wouldn't the rate impact come

1 down as well?

2 JUDGE SAINSOT: Yes, it would.

3 COMMISSIONER LIEBERMAN: So in fact, over the
4 two years, it would be .5, plus .5, plus 1, so it
5 really is a cap, meaning in the sense that over time,
6 they can't go above a 2 percent rate impact?

7 JUDGE SAINSOT: Yeah. I mean, it's -- the
8 statute is not a model of clarity, but it is a cap in
9 many ways, but I just don't think it's -- I just
10 don't think it's a hard-and-fast, you reach this
11 thing and you're out; but at the same time, I do
12 think it is some sort of a cap, that it...

13 COMMISSIONER LIEBERMAN: The company -- well,
14 can I get -- that actually wasn't my point.

15 COMMISSIONER FORD: Oh.

16 COMMISSIONER LIEBERMAN: My point was -- what I
17 was curious about was it struck me that with these
18 additive energy savings and the rate cap, however we
19 define it, at some point, they're not allowed to
20 recover beyond that. Was there any evidence in the
21 testimony -- and I couldn't find it -- but was there
22 any evidence that talked about -- in trying to

1 achieve the caps when -- in trying to achieve the
2 targets when they would hit the rate cap? I mean,
3 there was some planning horizon; right?

4 JUDGE SAINSOT: Right.

5 COMMISSIONER LIEBERMAN: And there's some cost
6 trajectory?

7 JUDGE SAINSOT: Right.

8 COMMISSIONER LIEBERMAN: Was there any evidence
9 as to when those two butt up against each other?
10 When, to get 1.8 percent of energy savings, it will
11 cost 2 percent?

12 JUDGE SAINSOT: No. And I think -- I think
13 it's too early to tell right now. This is the very
14 beginning, so they're just trying to --

15 COMMISSIONER LIEBERMAN: No, I understand, but
16 they know what the -- they know what their trajectory
17 or savings are and they know what their costs they
18 can recover are, okay. I didn't see either, so
19 that's why...

20 The final point, and I'll be quick,
21 when you go around the country, everybody talks about
22 energy efficiency as, you know, 2 or 3 cents a

1 kilowatt hour or the equivalent thereof, and I'm
2 assuming when they say that, that's because they
3 amortize the cost of the investment over the lifetime
4 of the investment, you know, if the light bulb lasts
5 three years, you get somewhere in the range of 3
6 cents a kilowatt hour. How are we recovering the
7 costs? Are we amortizing the investment or are we
8 recovering it in one year?

9 JUDGE SAINSOT: I'm not -- let me think
10 about -- we -- it gets recovered immediately except
11 for a few of the demand response, if you look in the
12 section --

13 COMMISSIONER LIEBERMAN: Okay. So we're
14 recovering everything in one year?

15 JUDGE SAINSOT: Right.

16 COMMISSIONER LIEBERMAN: Was there much
17 discussion on that topic?

18 JUDGE SAINSOT: No.

19 CHAIRMAN BOX: Anything else, Commissioner?

20 COMMISSIONER LIEBERMAN: I'll have
21 significantly more on that later, but I'll stop now.

22 CHAIRMAN BOX: There's one other question I

1 have and then we'll move on. Can you explain the
2 authority and the duties of the advisory board?

3 JUDGE SAINOT: That's Judge Kimbrel.

4 CHAIRMAN BOX: I think it's -- whether it's
5 voluntary or not.

6 JUDGE KIMBREL: Yeah, that's not statutorily
7 required, but the utilities agreed that it would be
8 beneficial to them achieving their energy efficient
9 demand response goals. And, generally, their duties
10 would be to review program -- final program designs,
11 plan progress against metrics and statutory goals and
12 budget shifts between programs.

13 CHAIRMAN BOX: It's all voluntary?

14 JUDGE KIMBREL: Yes.

15 CHAIRMAN BOX: Was a report required to the
16 Commission or are we --

17 JUDGE KIMBREL: We did add that, there would be
18 a report to the Commission and, again, they would
19 just follow-up with recommendations and program input
20 portfolio performance, so --

21 COMMISSIONER O'CONNELL-DIAZ: Judge Kimbrell,
22 would that be an annual report to the Commission?

1 JUDGE KIMBREL: Yes.

2 CHAIRMAN BOX: Any other questions? I want to
3 thank both judges. I think the discussion we are
4 having here today is because of the collapsed time,
5 November 15th through February -- three months, the
6 work you did, you are complimented for that. That's
7 why I asked this to be on the prebench agenda, to get
8 some clarity so that when we vote tomorrow, we can
9 have a better idea of what we're voting on given the
10 compressed time. I really appreciate your efforts
11 for this.

12 COMMISSIONER LIEBERMAN: I've been involved in
13 this kind of stuff a long time and I know how
14 complicated it can be and I think the orders -- given
15 the time frame, the orders were good.

16 JUDGE SAINOT: Thank you.

17 CHAIRMAN BOX: The next item of the agenda is
18 consideration of the proposed general rate increase
19 for North Shore Gas Company and the Peoples Gas Light
20 and Coke Company. Once again, if Judges Moran and
21 Gilbert can join us at the table. We can start out
22 the discussion today by, once again, thanking you for

1 your hard work and dedication for the full 11 months.
2 There's a lot of work that's gone into this, a lot of
3 analysis, both legal and others, and given the record
4 that you had before you, I think you did a very good
5 job. I really want to compliment you before we
6 start.

7 It is my understanding that we have
8 three major and some other amendments that would be
9 made today. The first amendment that's been
10 circulated, I think all the parties have agreed, on
11 the issue of return on equity. The amendment that we
12 have that you'll find in the order finds that the
13 just and reasonable rate return on equity for Peoples
14 Gas is 10.09 and for North Shore, 9.9 we came at that
15 result first by finding we think that the Staff's DCF
16 analysis was somewhat flawed and our amendment
17 recalculates the base hourly and average of utilities
18 DCF analysis, the utilities cap M and the Staff's
19 cap M. We're not deviating as to what it will say
20 from precedent, but we think it was so flawed in this
21 particular situation that we should find another
22 approach to get to a reasonable conclusion.

1 The second part of that amendment, to
2 my understanding is, it affirms the Staff's
3 recommendation that we deduct a certain percentage to
4 account for the increased risk resulting from
5 affiliated business activities of the company.

6 And third, my understanding is the
7 amendment deducts approximately 10 basis points to
8 account for the reduced risks afforded the companies
9 Rider VBA.

10 Is there someone who wants to make
11 that motion to propose those changes?

12 COMMISSIONER O'CONNELL-DIAZ: So moved.

13 CHAIRMAN BOX: Is there a second?

14 COMMISSIONER FORD: Second.

15 CHAIRMAN BOX: So moved and seconded. The
16 amendment is before you for discussion. Discussion
17 on the amendment? We'll take a vote for the record.

18 Commissioner Elliott?

19 COMMISSIONER ELLIOTT: Aye.

20 CHAIRMAN BOX: Commissioner Lieberman?

21 COMMISSIONER LIEBERMAN: Aye.

22 CHAIRMAN BOX: Commissioner O'Connell-Diaz?

1 COMMISSIONER O'CONNELL-DIAZ: Aye.

2 CHAIRMAN BOX: Commissioner Ford?

3 COMMISSIONER FORD: Aye.

4 CHAIRMAN BOX: The chair votes aye. 5 to zero
5 on that amendment.

6 The second amendment concerns Rider
7 VBA. It is my understanding that the language has
8 also been circulated from the Staff's -- of all the
9 Commissioners considering the PEPO language on Rider
10 VBA. As you'll see when you see the order, we
11 accepted many of the Staff's recommendations that
12 included safeguards, a four-year pilot program and it
13 has other safeguards, as I said, indicating that the
14 Rider only recovers a fixed cost, not the variable
15 costs. The pilot program -- I think there's a whole
16 list of other safeguards we'll discuss at the
17 appropriate time.

18 Does anyone want to make that motion?

19 COMMISSIONER FORD: I certainly thank you for
20 taking my thunder.

21 CHAIRMAN BOX: I'm sorry. I'm sorry about
22 that.

1 COMMISSIONER FORD: As you know, I distributed
2 to my fellow Commissioners for review Rider VBA.
3 Given that this -- presents a case first impression
4 for the Commission, these revisions provide for the
5 implementation of Rider VBA as a four-year pilot
6 program. The revisions also note that the Commission
7 may, at its discretion, initiate a proceeding at any
8 time in the future to evaluate the effectiveness of
9 this new rider. I believe that the Commission's
10 vigilant oversight of the deployment and impact of
11 Rider VBA will provide important safeguards to
12 protect ratepayers.

13 CHAIRMAN BOX: Is there a motion?

14 COMMISSIONER LIEBERMAN: Could I just add --

15 CHAIRMAN BOX: Sure.

16 COMMISSIONER LIEBERMAN: -- I'm voting in favor
17 of Rider VBA and I'd like to take this opportunity to
18 explain.

19 CHAIRMAN BOX: Let's get the motion on the
20 floor and then we can have a discussion. I give you
21 a lot of latitude. Is there a motion?

22 COMMISSIONER O'CONNELL-DIAZ: So moved.

1 CHAIRMAN BOX: Second?

2 COMMISSIONER ELLIOTT: Second.

3 CHAIRMAN BOX: Moved and seconded, the
4 amendments to Rider VBA. Discussion, Commissioner
5 Lieberman.

6 COMMISSIONER FORD: Now is your time.

7 COMMISSIONER LIEBERMAN: I am voting in favor
8 of Rider VBA and I'd like to take an opportunity to
9 explain why and before I start, I want to be very
10 clear, very clear on this point. Under this new rate
11 design that we are adopting today, I think, customers
12 will never pay for natural gas they do not consume,
13 period. If a customer installs a high efficiency
14 furnace and consumes significantly less natural gas,
15 their bill will go down dollar for dollar by the cost
16 of the gas not consumed, period. What will change,
17 however, is how the utility recovers its fixed cost.
18 The problem is you can't conserve the fixed costs,
19 they don't go away, that's why they're called fixed.
20 And for many years, regulators, utilities and
21 intervenors agree that the utilities fixed costs, the
22 pipes, the meters and the costs associated with

1 maintaining them, would be blended with the variable
2 costs, the costs of the consumer commodity so the
3 price the customer saw was a combination of the
4 commodity and the cost of delivering that commodity.
5 That structure was all fin and dandy as long as
6 consumption was rising on a per household level
7 because the utility could recover its fixed costs in
8 its blended rates and no one complained.

9 But as soon as consumption started to
10 fall on a per-household basis in the mid-1990s, that
11 blended rate structure was no longer workable because
12 if you don't recover the costs to maintain your
13 network, you won't have a network. And, frankly, I
14 think we ought to be cheering this problem; it was
15 caused by the very customer behavior that we are all
16 trying to incite, increase energy efficiency. The
17 record in this case is clear. Between 1995 and 2006,
18 per household consumption fell by more than
19 20 percent. Installation of more efficient furnaces,
20 energy efficient rehab of existing houses and
21 construction of new energy efficient homes all played
22 a part in that decline. We ought to be cheering an

1 enormous success story, a significantly greener and
2 more affordable Chicago; but that success story
3 creates its own dilemma and that dilemma is the one
4 the Commission is struggling with today. In the old
5 world, the fixed costs were hidden and recovered
6 through ever increasing energy consumption. In the
7 new world, wherever increasing energy consumption is
8 not an option and increased energy efficiency is a
9 necessity, the question of how do you design the
10 rates so that the once hidden fixed costs can be
11 recovered becomes paramount?

12 If I'm disappointed today with the
13 Commission's resolution of this issue, it really
14 relates to the lack of evidence in the record with
15 regards to monetizing the reduction and the financial
16 risk to the utility that should be reflected in what
17 I believe to be a significantly lower ROE. All the
18 parties agreed that ensuring the collection of fixed
19 costs will reduce the financial risk of the company.
20 Unfortunately, there was little evidence that would
21 allow the Commission to quantify that reduction. I,
22 for one, consider our actions on the risk reduction

1 issue today merely a placeholder until the parties
2 develop a more constant methodology. I look forward
3 to that methodology because I think what we did today
4 does not reflect the true reduction of risk. Thank
5 you.

6 CHAIRMAN BOX: Thank you.

7 Commissioner Elliott.

8 COMMISSIONER ELLIOTT: Well, I'd like to echo
9 Commissioner Lieberman's comments as an economist and
10 a former rates person. It's clear to me that a
11 simple rate design solution to this issue was to not
12 try to recover fixed costs through variable charges;
13 but instead, to have a fixed charge, a monthly charge
14 that covers the costs of fixed costs and the
15 commodity costs would be the only thing that is
16 variable with consumption. However, that is quite a
17 shift from traditional rate-making practice that this
18 Commission has engaged in over the years and I think
19 this -- Rider VBA that is before us today is a very
20 reasonable solution to address the issue of fixed
21 cost recovery. And, again, this is a fixed cost
22 issue, it has nothing to do with the consumption of

1 natural gas and I would note that we've limited the
2 fixed cost recovery to, I believe, 95 percent of the
3 costs which was a fixed variable split put forth in
4 the case in Peoples.

5 Another point I'd like to mention is
6 the point that you raised with conservation and the
7 effect that we've seen over the last decade or so
8 with natural gas. I'd like to point out that, in my
9 mind, a lot of that has been achieved because the
10 price of natural gas is the average and that
11 consumers see the actual cost of the commodity. On
12 the residential side, it may be 30 to 45 days later
13 than what they actually consumed in terms of billing
14 cycle; but the fact is that they've made adjustments
15 to their consumption and conserved, unlike what we
16 see in the electric industry where these costs are
17 averaged throughout the year and we see ever
18 increasing consumption during the peak periods. So I
19 think it's a good program and I support it.

20 CHAIRMAN BOX: Thank you.

21 Further comments or discussion?

22 As I indicated earlier, I think when

1 you've seen the order, hopefully it will avoid a lot
2 of the confusion. There will be audits every year,
3 financial reports every year and safeguards put in to
4 make sure that the utility earns no more than they're
5 allowed. I think that was one of the discussions in
6 the oral argument with the numbers given the
7 disparity of what it would have been over the years;
8 but by this order, they will not receive any more
9 than they are allowed and I think that's a great
10 insertion to put in there to make sure we are
11 safeguarding the community because it's innovative
12 and I think it's the wave of the future; but also, I
13 think it's something we should take a look at.

14 Commissioner Ford, any discussion?

15 (No response.)

16 Commissioner Elliott --

17 COMMISSIONER ELLIOTT: I'll move.

18 CHAIRMAN BOX: -- voting on the amendment.

19 COMMISSIONER ELLIOTT: Aye.

20 CHAIRMAN BOX: Commissioner Lieberman?

21 COMMISSIONER LIEBERMAN: Aye.

22 CHAIRMAN BOX: Commissioner O'Connell-Diaz?

1 COMMISSIONER O'CONNELL-DIAZ: Aye.

2 CHAIRMAN BOX: Commissioner Ford?

3 COMMISSIONER FORD: Aye.

4 CHAIRMAN BOX: The chair votes aye, it's 5,
5 zero.

6 The next amendment is Rider ICR.

7 Commissioner Lieberman?

8 COMMISSIONER LIEBERMAN: The amendment was
9 circulated a few days ago and it outlines a framework
10 for information and analysis that I believe would
11 have made it much easier for the Commission to have
12 approved this system modernization rider.

13 CHAIRMAN BOX: You made those changes, you make
14 that into a motion.

15 COMMISSIONER LIEBERMAN: So moved.

16 CHAIRMAN BOX: Second?

17 COMMISSIONER O'CONNELL-DIAZ: Second. I would
18 just comment that --

19 CHAIRMAN BOX: Moved and seconded. It's open
20 for discussion purposes.

21 COMMISSIONER O'CONNELL-DIAZ: I support
22 Commissioner Lieberman's revisions. I think my

1 office did some revisions to that section and I think
2 the Commission was left with somewhat of a half-baked
3 cake with regard to this important issue in this case
4 and while there is merit in the tenets of Rider ICR,
5 there was just not enough in this record for the
6 Commission to hang their hat on and that was
7 troubling from the standpoint that we all understand
8 the need for infrastructure improvement. And I think
9 if we look at that and we get those improvements done
10 sooner than later, I think we are looking at a safer
11 system, as well as probably a less expensive system
12 given the rising costs in construction these days.

13 So it was troubling to me that we were
14 not given a complete record upon which that we could
15 give serious consideration to this issue and I would
16 note that the City was -- they filed additional
17 briefs to support it; however, they have suggested
18 that we should do it on policy considerations. But
19 the bottom line is, the Commission needs the evidence
20 in the record for us to be able to hang our hat on
21 and it just wasn't there, so I would support
22 Commissioner Lieberman's revisions coupled with the

1 ones that my office did and are we voting on that
2 now?

3 CHAIRMAN BOX: I'm sorry?

4 COMMISSIONER O'CONNELL-DIAZ: Are we voting on
5 that?

6 CHAIRMAN BOX: If there's no other
7 discussion -- are there any other discussion?

8 COMMISSIONER LIEBERMAN: I have a small...

9 CHAIRMAN BOX: Commissioner Lieberman?

10 COMMISSIONER LIEBERMAN: This rider and this
11 discussion and the system modernization proposal, I
12 think presented the Commission with a dilemma. To
13 ensure continued reliability, we need to order
14 increased system modernization rather than less, all
15 things being equal.

16 In a general sense, the application of
17 modern technology for these networks that we regulate
18 and upon which our economy depends makes simple
19 common sense. But unless the proponents of the
20 modernization initiatives provide a more compelling
21 rationale, in terms of identifying and quantifying
22 reduced system costs and increased customer benefits

1 that was presented in the case before us, we will
2 never be persuaded that the modernization proposed
3 will be in the best interest of the ratepayers; less
4 system modernization in Illinois rather than more and
5 the consumers and businesses in Illinois will be the
6 worse for it.

7 In the order, you'll see a list of
8 items that would have made this significantly easier
9 to agree to if they had been in evidence and I would
10 recommend that that, at least from my perspective,
11 Peoples and frankly anybody proposing a system
12 modernization rider review that list carefully.

13 COMMISSIONER FORD: And I'll pile on. I am
14 also well aware of the importance and the critical
15 necessity of modernizing our pipeline infrastructure
16 to ensure continued reliability, particularly as a
17 member of the U.S. Department of Transportation's
18 Technical Pipeline Safety Standards Committee.
19 However, as a Commissioner, my decision must be based
20 on the record -- the evidence in the record and
21 certainly the lack of support presented by the
22 company for this proposed rider is also troubling to

1 me. The company failed to present this Commission
2 with any cost benefit analysis or an adequate plan
3 for its accelerated program and for this reason, I
4 certainly have to support your recommendations and I
5 vote for the proposed rider, Commissioner Lieberman.

6 COMMISSIONER LIEBERMAN: Thank you.

7 CHAIRMAN BOX: Further discussion? Discussion
8 on the Rider ICR only. Further discussion?

9 (No response.)

10 Roll call vote.

11 Commissioner Elliott?

12 COMMISSIONER ELLIOTT: Aye.

13 CHAIRMAN BOX: Commissioner Lieberman?

14 COMMISSIONER LIEBERMAN: Aye.

15 CHAIRMAN BOX: Commissioner O'Connell-Diaz?

16 COMMISSIONER O'CONNELL-DIAZ: Aye.

17 CHAIRMAN BOX: Commissioner Ford?

18 COMMISSIONER FORD: Aye.

19 CHAIRMAN BOX: The chair votes aye. It's 5,
20 zero for -- against not including Rider ICR.

21 One other amendment, I understand the
22 order has gone through an extensive text editing, do

1 I have a motion to include those edits in the final
2 order?

3 COMMISSIONER O'CONNELL-DIAZ: So moved.

4 CHAIRMAN BOX: Second?

5 COMMISSIONER LIEBERMAN: Second.

6 CHAIRMAN BOX: Seconded to accept the extensive
7 text editing. All in favor say "aye".

8 (Chorus of ayes.)

9 Opposed?

10 (No response.)

11 The vote is 5, zero.

12 Any other amendments to come before
13 us?

14 COMMISSIONER LIEBERMAN: I circulated an
15 amendment on house service a week or so ago. This is
16 a complicated issue and has been the subject of much
17 debate behind this wall and I would -- I would just
18 like to say that I really -- after reviewing the
19 record and reviewing the PEPO, feel that the PEPO
20 makes a mistake. I'm uncomfortable with the
21 conclusion and having actually read 7-102, the
22 dilemma I have is that the PEPO argues that this

1 Commission provide an implicit waiver to 7-102 in the
2 previous case. I have read 7-102 and I've looked at
3 the waiver criteria and I'm hard-pressed to
4 understand what criteria we use to waive that.

5 COMMISSIONER O'CONNELL-DIAZ: Commissioner
6 Lieberman, when you say "previous case," which case
7 do you mean?

8 COMMISSIONER LIEBERMAN: The '01 case, the
9 settlement case.

10 COMMISSIONER O'CONNELL-DIAZ: Not the previous
11 rate case?

12 COMMISSIONER LIEBERMAN: No, no, sorry, the
13 settlement case. My understanding is that is where
14 the implicit waiver occurred. And, so, this is
15 really an argument based on a reading of the statute.
16 I don't understand which -- which waiver criteria
17 that we use, so I would urge your support.

18 CHAIRMAN BOX: Commissioner Lieberman, if you'd
19 like to make that in the form of the motion, we can
20 have it seconded and have a discussion.

21 COMMISSIONER LIEBERMAN: So moved.

22 CHAIRMAN BOX: Is there a second?

1 COMMISSIONER ELLIOTT: I will second.

2 CHAIRMAN BOX: The move is seconded to amend
3 the up services discussion in the order. It's open
4 for discussion.

5 COMMISSIONER ELLIOTT: I would have to echo
6 Commissioner Lieberman's comments. My strict reading
7 of this was that it appeared to me that 7-102
8 applied, that the waiver provisions were fairly clear
9 and that they have not been met and, in fact, the
10 waiver had not been expressly requested in the
11 previous proceeding. So I'm a little unclear as to
12 how we can waive it in this case.

13 CHAIRMAN BOX: Further discussion?

14 (No response.)

15 Before I make my statement, I'd like
16 to thank our assistants and our Staff. I think
17 Commissioner Lieberman is correct, this has been the
18 toughest issue, I think in the last -- since the oral
19 argument on the 23rd of January, going back and forth
20 trying to find exactly what happened and what we
21 should or could do. The problem I have with it is
22 that in the case and in the oral argument, something

1 was fairly and totally lacking. I don't think the
2 Attorney General's Office even weighed in on this
3 particular issue. The City, the Citizens Utility
4 Board weighed in on how the revenues should be
5 expended and that troubles me a great deal because
6 the Staff obviously thinks that there should be a
7 7-102 hearing and other arguments they make even to
8 the point of having us order this activity shut down.

9 I was very new to this Commission in
10 1996 -- I'm sorry, 2006 when this matter came before
11 us in a very large settlement, I think it over a
12 hundred million dollars, Peoples Gas case. There
13 were a lot of people that were very upset, might be a
14 good way to put it, because they were not in the room
15 when this negotiation was going on, when this
16 settlement was made -- our Staff was not. The
17 Commission was presented with an order that we could
18 not change, we couldn't tamper with. So I -- and I
19 still don't fully understand what went on in those
20 rooms, what that hundred million dollars was for, how
21 much was it for, the help services and going back and
22 forth and once again, the Attorney General's Office

1 chose not to put anything in on this particular
2 issue. In fact, I should be bluntly honest as an
3 elephant in the room, none of the parties who
4 received money from that settlement weighed in on
5 this issue at all and that troubles me.

6 They talk about revenues coming
7 through the service and now we're being asked to
8 order the service to cease and that troubles me and I
9 don't think I -- based on what I've seen and what
10 I've heard, I don't think I have enough to disagree
11 with the Administrative Law Judges. My understanding
12 is if, in fact, in the future -- and that's why I
13 asked the question, I think two maybe three times in
14 the oral argument, is there a benefit to the
15 ratepayers through this service and no one said "no."

16 My understanding is in the future if,
17 in fact, during one of the reconciliation proceedings
18 if it is shown that something has dramatically
19 changed and there's -- the expenses I think exceed
20 the revenues, people have an avenue to bring that
21 back before us; but it just bothers me that we don't
22 have a full record before us with all the parties

1 weighing in on the pros and cons of this proposal or
2 of this service and the 01-0707 proceeding about
3 that, a lot of us didn't have anything to do with or
4 could tamper with. I think it is a bar to really
5 understanding exactly what's going on in Hub Service
6 and why it wasn't examined.

7 Another issue I have a problem with,
8 it started in '98 and if Staff knew it was going on
9 in '98 or '99 or 2000 or 2001, why didn't someone
10 bring it to someone's attention that a 7-102 hearing
11 should be had? The first time it came before the
12 Commission was in the 01-0707 case, which we either
13 had to vote up and down and since all the parties
14 agreed on settlement, we had to approve it. So I'd
15 like to think we could resolve this issue, but I
16 think in the next few years it will be resolved; but
17 based on what we have here, I can't see making this
18 operation cease or going back ordering a 7-102
19 hearing.

20 Any other discussion on the amendment?

21 COMMISSIONER O'CONNELL-DIAZ: Chairman, I would
22 just like to go out on that limb with you. I agree

1 with points that the chairman has raised. I believe
2 that the recommendations that's contained in the
3 proposed order that's been submitted to the
4 Commission sketches out the kind of legal conundrum
5 that we find ourself in. I think there's an issue as
6 to -- just as the chairman noted -- the Hub Services
7 that's been going on for all these many years and
8 we've never done anything about it. They have gotten
9 FERC approval. I think there was an argument made by
10 the company that a 7-102 proceeding wasn't necessary
11 and, you know, I may agree with that.

12 I think then you get to the benefit.
13 Is this a benefit to ratepayers and, yes, it is a
14 benefit to ratepayers. But then we get to the
15 01-0707 and when I saw that number come up, I
16 immediately went back to that settlement agreement
17 and if you go to Page 89 this is addressed there.
18 So, again, the Commission is hemmed in by settlement
19 agreement that our Staff was not involved in, there
20 were monies exchanged and if my memory serves me
21 correctly, it was a hundred million dollars and I
22 think our Staff was suggesting that it should have

1 been resolved in -- to the tune of some 240 million
2 or 300 million. Where the hundred million number
3 came from, it was never clear to myself as I sat and
4 watched the show go on. So now we find ourselves
5 down the road where this has been part of a
6 Commission order which I think makes another legal
7 impediment for us to do anything at this point with
8 regard to this particular issue.

9 However, as the chairman has noted in
10 the reconciliations that we have on an annual basis,
11 if something changes in the methodology or that it no
12 longer is a benefit to ratepayers, it will be
13 addressed in those proceedings. So it is not as
14 though the ratepayer is going to be left out in a
15 lurch, but I believe that it is unfortunate that
16 there was a settlement that they clearly maybe didn't
17 understand the import of what they were doing and now
18 we are left with that as the record in this matter.

19 So I really come from the basis of the
20 Commission should endeavor to always enter a legally
21 sustained order. I think the ALJs have addressed
22 that issue in a primal fashion; that if this case

1 were to be on appeal, we would be in good territory.
2 I do see that there are legal impediments for us to
3 go the way that Commissioner Lieberman and
4 Commissioner Elliott and Staff -- and I certainly
5 understand Staff's position here, but it is what it
6 is and, so, we must vote on it as the record stands
7 today. So I concur with the chairman.

8 CHAIRMAN BOX: Further discussion?

9 (No response.)

10 I'll take the vote.

11 Commissioner Elliott?

12 COMMISSIONER ELLIOTT: Aye.

13 CHAIRMAN BOX: Commissioner Lieberman?

14 COMMISSIONER LIE: Aye.

15 CHAIRMAN BOX: Commissioner O'Connell-Diaz?

16 COMMISSIONER O'CONNELL-DIAZ: Aye -- nay. I'm
17 sorry. I thought we were voting on the order.

18 CHAIRMAN BOX: Commissioner Ford?

19 COMMISSIONER FORD: Nay.

20 CHAIRMAN BOX: The Chair votes no. The
21 amendment fails by a vote of 2 to 3.

22 COMMISSIONER ELLIOTT: Chairman, if I could, I

1 think we are all aware that there's an audit that's
2 currently underway and I think that should be very
3 informative in terms of the gas storage, the
4 operations and if there is an opportunity in the
5 future for anybody to bring this back before us if
6 there are negative ratepayer impacts, I would
7 certainly look for that.

8 CHAIRMAN BOX: I echo that.

9 COMMISSIONER ELLIOTT: Thank you.

10 COMMISSIONER O'CONNELL-DIAZ: I just want to
11 make a point. I think you bring up an important
12 point. There's two vehicles for ratepayer protection
13 here beyond this order and -- that being the audit
14 and reconciliation, so this is not the end of the
15 story; but for this particular docket, I think it
16 kind of has to be.

17 CHAIRMAN BOX: Can I have a motion, I want to
18 take a vote on the order as amended -- on the
19 amendments that were accepted, the return on equity,
20 Rider VBA, Rider ICR and the text edits?

21 JUDGE GILBERT: Yes. I'm advised that we have
22 to tell you that there were four comments --

1 JUDGE WALLACE: I did that earlier.

2 JUDGE GILBERT: Oh, you did?

3 JUDGE WALLACE: Yes.

4 JUDGE GILBERT: Oh, okay. Never mind.

5 CHAIRMAN BOX: Since they were submitted so
6 late, we can still prepare a response as required to
7 under the rules and the rules just require us to
8 prepare a response and put it on the Web site and
9 respond to those individuals; right? I mean, they
10 can't submit a comment 2 minutes before you are due
11 to make a decision and expect --

12 JUDGE WALLACE: I was going to say I need to go
13 look that up because I think that the purpose is to
14 allow the parties to have an opportunity, if they
15 wish to respond to those comments. I don't know that
16 the Commission needs to take any action to respond to
17 the comments at this time. I think that the
18 Commission does not need to come up with any
19 response, but it's more like, as I just said, if the
20 commenter said something that the parties wish to
21 respond to, it's that dilemma that we have to allow
22 comments but then not violate our ex-parte rules.

1 COMMISSIONER O'CONNELL-DIAZ: And, Judge
2 Wallace, just to refresh of memories, what's the
3 timetable on the ComEd filing time being able to file
4 the comments and present them?

5 JUDGE WALLACE: I'd have to check with Pat
6 Foster. I don't believe there's any particular time
7 frame, but these comments, at least to the point that
8 they're out there on our e-Docket system, that the
9 other parties can see them and then have an
10 opportunity to respond, if they so desire.

11 CHAIRMAN BOX: Once again, we'll take a final
12 vote on the order as amended on those -- on the
13 amendments that were successful, the return on
14 equity, Rider VBA, Rider ICR and the text edits.

15 Commissioner Elliott, is there a
16 motion to accept the order as amended?

17 COMMISSIONER ELLIOTT: So moved.

18 CHAIRMAN BOX: Second?

19 COMMISSIONER O'CONNELL-DIAZ: Second?

20 CHAIRMAN BOX: Moved and seconded to accept the
21 order as amended.

22 The roll call vote, Commissioner

1 Elliott?

2 COMMISSIONER ELLIOTT: Aye.

3 CHAIRMAN BOX: Commissioner Lieberman?

4 COMMISSIONER LIEBERMAN: Aye.

5 CHAIRMAN BOX: Commissioner O'Connell-Diaz?

6 COMMISSIONER O'CONNELL-DIAZ: Aye.

7 CHAIRMAN BOX: Commissioner Ford?

8 COMMISSIONER FORD: Aye.

9 CHAIRMAN BOX: The chair votes aye. The order

10 as amended is passed by a vote of 5 to zero.

11 Once again, I want to thank the judges

12 for a lot of hard work for a long time. I really

13 appreciate the efforts.

14 The only item remaining today -- we

15 have a FERC matter to discuss in closed session. Is

16 there a motion to go into closed session?

17 JUDGE WALLACE: Mr. Chairman, we will be

18 forwarding all those changes to the ALJs.

19 CHAIRMAN BOX: Is there a second?

20 COMMISSIONER O'CONNELL-DIAZ: Second.

21 CHAIRMAN BOX: All in favor say "aye."

22 (Chorus of ayes.)

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CHAIRMAN BOX: Opposed?

(No response.)

The vote is 5 to zero. We're going to
go into closed session to discuss FERC matters.

(Whereupon, proceedings
were had in closed session.)

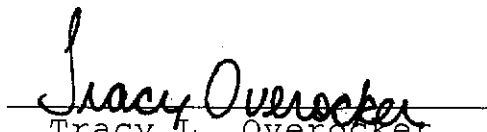
CERTIFICATE OF REPORTER

STATE OF ILLINOIS)
)
COUNTY OF COOK)
)
CASE NOS.: 07-0539, 07-0540,)
 07-0241, 07-0242)

TITLE: Prebench session

I, Tracy L. Overocker do hereby certify that I am a court reporter contracted by SULLIVAN REPORTING COMPANY, of Chicago, Illinois; that I reported in shorthand the evidence taken and the proceedings had in the hearing on the above-entitled case on the February 5 A.D. 2008; that the foregoing 60 pages are a true and correct transcript of my shorthand notes so taken as aforesaid, and contains all the proceedings directed by the Commission or other person authorized by it to conduct the said hearing to be stenographically reported.

Dated at Chicago, Illinois, this day
February 22 A.D. 2008.


Tracy L. Overocker